

IN THE COURT OF COMMON PLEAS
CENTRE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH : NO. CP-14-CR-2421-2011
: NO. CP-14-CR-2422-2011

VS :

GERALD A. SANDUSKY :

TRANSCRIPT OF PROCEEDINGS
(Hearing)

BEFORE: Barry F. Feudale, Senior Judge
John M. Cleland, Senior Judge
(By telephone)

DATE: June 26, 2012

PLACE: Attorney General Offices
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State College, PA 16803

APPEARANCES:

FOR THE COMMONWEALTH:
Joseph E. McGettigan, Esq.
Frank G. Fina, Esq.

FOR THE DEFENDANT:
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DEBRA C. JIMMEL
PROTHONOTARY
CENTRE COUNTY, PA
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ORIGINAL

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11	COMMONWEALTH:	
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1 P R O C E E D I N G S

2 JUDGE CLELAND: Hello.

3 JUDGE FEUDALE: Judge Cleland?

4 JUDGE CLELAND: Yes, it is.

5 JUDGE FEUDALE: Judge Feudale. How are
6 you?

7 JUDGE CLELAND: I'm good. Thank you.

8 JUDGE FEUDALE: That's good. I'm here
9 at the -- where am I actually?

10 MR. FINA: Green Tech Drive at the
11 Office of Attorney General offices in Centre
12 County.

13 JUDGE FEUDALE: Okay. And Mr. Fina is
14 here. I'll have him identify who else is
15 present, and we'll proceed from there. He'll
16 indicate the reason why we're present.

17 MR. FINA: Thank you, Your Honor.

18 Frank Fina behalf of the Office of
19 Attorney General, along with Senior Deputy Joseph
20 McGettigan. Also present is Regional Director
21 Randy Feathers, Special Agent Tony Sassano, State
22 Police Trooper James Ellis, State Police Corporal
23 Jeff Dombrowski, Joseph Amendola, and Attorney
24 Carl Rominger, and the court reporter is also
25 present.

1 Initially, I just want to thank
2 everybody for so quickly getting together and
3 making themselves accessible for this hearing.

4 In terms of background as to why I
5 requested this hearing, the Office of Attorney
6 General has been contacted by the media fairly
7 extensively over the last two to three days with
8 information as a result of the prosecution of
9 Mr. Sandusky. This information has been getting
10 increasingly detailed and has been involving --
11 Judge, can you hear me all right?

12 JUDGE CLELAND: I can hear you fine.
13 Thank you.

14 MR. FINA: Okay. And has involved
15 information beyond that which was disclosed at
16 the trial and during the proceedings.

17 This came to a head yesterday when the
18 office was contacted with specific information
19 that the recording that was made of Matthew
20 Sandusky's interview with the Office of Attorney
21 General had been disclosed to the media and that
22 they were going to play the recording publicly.

23 That, in fact, has now occurred this
24 morning on *The Today Show*. Excerpts of the tape
25 recorded interview of Matthew Sandusky have been

1 played publicly.

2 In addition, there have been questions
3 asked of the Office of Attorney General regarding
4 grand jury testimony that was given, both by
5 witnesses who testified at trial and by
6 individuals who did not testify at the trial.
7 The Office of Attorney General has significant
8 concerns about, first of all, the use of grand
9 jury information disclosure to the public or to
10 third parties, and this is a concern that the
11 office had -- that we have had pretrial and even
12 during the trial.

13 I want to be specific. I'm talking
14 about information that was not disclosed during
15 the trial. There is no question that grand jury
16 information disclosed at any criminal proceeding
17 becomes public information and that the secrecy
18 provisions, absent some extraordinary
19 circumstance, would no longer apply.

20 I'm talking about information that was
21 not disclosed as part of the proceedings in this
22 case. As I think both Your Honors are aware,
23 this concern was previously raised in at least
24 one hearing and I believe in two hearings about
25 the potential future use of discovery in grand

1 jury materials in this case.

2 Additionally, the Commonwealth has
3 concerns about items turned over under Rule 573
4 and/or under the *Brady* case, *Maryland versus*
5 *Brady*, about the post-trial public disclosure of
6 those materials which it's certainly a novel
7 issue and one that I can't find any law on. But
8 I'm aware of no provision or authority for the
9 post-trial disclosure of discovery information of
10 criminal investigative information that was not
11 disclosed during the trial and yet is now being
12 disclosed publicly. I would assert it's outside
13 of the rules that apply to discovery and outside
14 of the law to do so.

15 I think it also raises questions that
16 are beyond the ken of this Court perhaps in
17 conflict of interest and issues whether or not
18 such disclosures are in the best interests of
19 Mr. Sandusky, an odd situation for the
20 Commonwealth to be in to be arguing the best
21 interests of Mr. Sandusky but nonetheless one
22 that I think may be appropriate to raise to the
23 Courts at this time.

24 It's the Commonwealth's desire --
25 obviously, it's ultimately up to the Courts, but

1 it's the Commonwealth's desire that inquiry be
2 made and about these disclosures, how they
3 occurred, and some control, if possible, be
4 asserted over any future disclosures of either
5 the discovery information or grand jury
6 information that are in the possession of the
7 defense.

8 The Commonwealth is willing to provide
9 and able to provide testimony, for example, about
10 our procedures and the controls that we have had
11 over the taped interview of Matthew Sandusky. We
12 believe we can state very clearly who had copies,
13 how our copies were maintained and secured. So I
14 defer to Your Honors as to how you would want to
15 proceed from this point on.

16 JUDGE FEUDALE: Judge, if I may, I would
17 like to hear from Messrs. Amendola and/or
18 Rominger just based on what comments Mr. Fina has
19 now put on the record before yourself and myself.

20 JUDGE CLELAND: That's fine with me. I
21 defer to your control.

22 MR. AMENDOLA: I can tell both Your
23 Honors I haven't shared the information I
24 received from the Commonwealth with anybody.
25 It's still in my files.

1 I know that -- I know that I received
2 the tape disc from the Commonwealth concerning
3 Matt Sandusky's testimony. I gave that copy to
4 Mr. Rominger to review because there was no
5 transcript. Even though the cover letter
6 indicated there was a transcript, Your Honors,
7 there wasn't. I didn't have the time in the
8 middle of trial to spend 45 minutes. I was
9 working every night four or five, six hours
10 getting ready for the next day. I asked
11 Mr. Rominger to review that to see what Matt
12 Sandusky said. Everything that I received from
13 the Commonwealth, besides copies that went to
14 people involved in the defense team, stayed with
15 me. In fact, the files are still in my vehicle.

16 That's the best I can tell you. I
17 didn't share it with anybody. Nobody got a copy
18 of stuff publicly other than the people on the
19 defense team from me.

20 JUDGE FEUDALE: Just a question then
21 before I hear from Mr. Rominger from myself.

22 You're aware, of course, as a result of
23 earlier proceedings I authorized turning over
24 transcripts of grand jury testimony in advance of
25 the testimony rather than after the witness

1 testified. Now, I know that one of those
2 transcripts would have been -- and perhaps I
3 should be corrected, would have been the
4 testimony of Matt Sandusky; is that correct?

5 MR. FINA: Yes, Your Honor. We turned
6 over the transcripts not only of the witnesses
7 who testified at trial but the transcript of any
8 witness who was a potential either Commonwealth
9 witness or defense witness.

10 JUDGE FEUDALE: Okay.

11 MR. FINA: I think that was beyond our
12 obligation but we did that. That would have
13 included the testimony of Matthew Sandusky.

14 JUDGE FEUDALE: Although Mr. Sandusky,
15 Matthew Sandusky, participated in some type of
16 matter that was memorized and turned over to
17 Mr. Amendola and to Mr. Rominger, he did not
18 testify at the trial itself?

19 MR. FINA: That's correct, Your Honor.
20 He did not testify.

21 JUDGE FEUDALE: So the transcript that I
22 had authorized released had -- has not been
23 utilized?

24 MR. FINA: That's correct. In fact his
25 name, I don't believe, ever was raised on the

1 record in open court.

2 JUDGE FEUDALE: That transcript you did
3 receive, you acknowledge you received that?

4 MR. AMENDOLA: I received it.
5 Ironically, Your Honor, I never reviewed it.

6 JUDGE FEUDALE: Is that right?

7 MR. AMENDOLA: Didn't have a need to. I
8 mean, the Court -- I know Judge Cleland is very
9 aware of this. I asked for continuances because
10 we were so backed up with discovery materials, I
11 was literally preparing the night before for
12 testimony the next day. Never got to Matt
13 Sandusky's transcript because he wasn't called as
14 a witness.

15 Now, any reference I made to Matt
16 Sandusky had to do with Matt Sandusky coming back
17 to State College after he testified and telling
18 his family that he had testified and that
19 basically he told everybody that his father
20 hadn't done anything with him. That's where I
21 had my reference in terms of whatever Matt
22 Sandusky -- what I anticipated him saying. We
23 were going to call him as our witness, Judge. Up
24 until the Commonwealth had told us what it told
25 us mid-trial, we had gone into the trial thinking

1 that Matt was going to be a defense witness.

2 JUDGE FEUDALE: He was listed as a
3 defense witness?

4 MR. AMENDOLA: Oh, yes. We listed him.

5 JUDGE FEUDALE: With the matters that
6 were brought before Judge Cleland?

7 MR. AMENDOLA: Yes.

8 JUDGE FEUDALE: Was he subpoenaed or
9 just listed as a witness?

10 MR. AMENDOLA: We didn't subpoena him
11 because he was a family member. We had the list
12 to the jury, and he was actually on both our
13 lists as I recall.

14 MR. FINA: That is true, yes.

15 MR. AMENDOLA: So always anticipated him
16 being a witness. My information had nothing to
17 do with the grand jury proceeding. I can
18 represent to this Court, to Judge Cleland, to the
19 Commonwealth, I never even looked at that
20 transcript because I saw no need to since he
21 wasn't called.

22 JUDGE FEUDALE: So when you were
23 contacted, however that may have occurred,
24 Mr. Fina, by Mr. Matthew Sandusky or his
25 lawyer -- I understand he has a lawyer?

1 MR. FINA: Yeah.

2 MR. McGETTIGAN: That is unclear.

3 MR. FINA: I don't know that he has --
4 I'm not sure how to state this. There is
5 somebody asserting that he is Mr. Sandusky's
6 attorney. I'm not sure Mr. Sandusky agrees with
7 that.

8 JUDGE FEUDALE: Okay.

9 MR. FINA: It's an odd circumstance.
10 But I'm not aware of whether or not he is
11 actually represented at this time.

12 JUDGE FEUDALE: Did he participate in
13 that proceeding?

14 MR. FINA: No. Matt Sandusky appeared
15 here on Thursday -- I'm sorry. On Saturday, what
16 date was that?

17 MR. AMENDOLA: June 15th.

18 MR. FINA: And June 15th.

19 MR. AMENDOLA: It would have been
20 Thursday evening as I recall.

21 MR. FINA: Thursday evening, June 15th,
22 and gave a statement. He did not have an
23 attorney during the statement. He then returned
24 the next day and gave a taped statement, no
25 counsel present. He didn't have any attorney

1 with him.

2 JUDGE FEUDALE: That's when the Office
3 of Attorney General decided, I think
4 appropriately so, to turn that information over
5 to --

6 MR. FINA: Yes.

7 JUDGE FEUDALE: To provide Mr. Amendola
8 with the information.

9 MR. FINA: Within I think it was an hour
10 of the tape being completed, it was driven over
11 to Attorney Amendola.

12 JUDGE FEUDALE: Ultimately, Judge
13 Cleland was also made aware of that?

14 MR. FINA: Yes, Your Honor.

15 JUDGE FEUDALE: So that information
16 falls within, as I see it, the public domain.
17 Evidently you voluntarily turned it over to
18 Mr. Amendola. And when I say public domain, I
19 don't mean within the ambit of grand jury
20 secrecy. Maybe I mischaracterized it. My main
21 concern would be the matter with regard to the
22 transcript that I had authorized be released and
23 I didn't hear anything that has been in any way
24 transmitted to the public or to NBC or the *Today*
25 people.

1 MR. FINA: I'm not clear on that, Judge.

2 JUDGE FEUDALE: Oh, okay.

3 MR. FINA: I think -- and I have not
4 gone through all of the interviews. I frankly
5 have been trying to avoid them. I heard that
6 there have been references made to the fact that
7 Mr. Matt Sandusky testified in front of the grand
8 jury and that his taped statement was
9 inconsistent with his grand jury testimony. The
10 Commonwealth has concerns with that disclosure.
11 In addition, you know, the future use of
12 Mr. Sandusky as a grand jury witness now is
13 problematic.

14 JUDGE FEUDALE: Um-hum. Noting that we
15 have a continuing investigation.

16 MR. FINA: Right.

17 JUDGE FEUDALE: Ongoing investigation.
18 Well, Mr. Rominger.

19 MR. ROMINGER: I have not read the Matt
20 Sandusky grand jury transcript either. Any
21 references I made again are based upon our
22 representations from Matt himself to his father
23 that he told the grand jury nothing had happened.
24 In fact, I believe Matt Sandusky actually helped
25 us carry boxes for his father in on Monday

1 morning of trial. So that was a complete
2 surprise when he switched sides.

3 What else? So -- and I was given the
4 Matt Sandusky tape -- was that Sunday -- in court
5 after Mr. Amendola had received it but prior to
6 us deciding whether or not to call Jerry -- which
7 day was the last day of trial?

8 MR. AMENDOLA: Thursday.

9 MR. ROMINGER: Thursday.

10 MR. FINA: Thursday, yeah.

11 MR. ROMINGER: So it would have been
12 Wednesday I received it. It's been in my hotel
13 room. It's been in my car. It's still in my
14 car. That's where it's been.

15 JUDGE FEUDALE: Mr. Fina, I'll go back
16 to you if you have any questions, and we'll also
17 hear, of course, from Judge Cleland. What
18 specific request are you making of me and/or
19 Judge Cleland?

20 MR. FINA: Your Honors, what we are
21 requesting is court orders. One would be
22 pertaining to grand jury information that again
23 has not been disclosed during the course of the
24 public proceedings at trial and a protective
25 order over that information that it not be

1 disseminated to any third parties without further
2 Order of the Court.

3 Obviously, that information may be
4 pertinent to appellate issues and it would be
5 appropriate for it to be utilized in that regard
6 and to be provided to any future appellate
7 counsel. But in terms of public dissemination or
8 dissemination to third parties not connected to
9 the ongoing nature of this case, I think would be
10 appropriate for a protective order to protect the
11 victims, to protect victims who were not named in
12 this case, and there was information turned over
13 about other potential victims.

14 In addition, I believe a protective
15 order under Rule 573, subsection f, would be
16 appropriate pertaining to investigative reports
17 and materials that were provided in discovery
18 that were not made public during the proceedings,
19 again, for the same reasons of protecting the
20 ongoing nature of this investigation, protecting
21 the victims in this case, protecting unnamed
22 victims in this case, and, frankly, just
23 preserving the integrity of the process.

24 It also seems to me it's not in the
25 interest of Mr. Sandusky and I'm in this very odd

1 position here but I don't think -- I can't
2 imagine defense counsel would disagree with me on
3 that this -- it's not in the interest of
4 Mr. Sandusky to have, you know, additional
5 incriminating information being revealed to the
6 public.

7 I'm talking about incriminating
8 information beyond that which was presented
9 during the trial. There's a great deal of that
10 in the discovery. Evidence that, for a variety
11 of reasons, the Commonwealth did not utilize but
12 that was highly incriminating of Mr. Sandusky. I
13 just don't know how that is in his best interest
14 or anybody's best interest this stuff be publicly
15 disseminated post trial.

16 JUDGE FEUDALE: 573(f) is what rule,
17 Frank? Just to help me.

18 MR. FINA: Rule 573(f) of the
19 Pennsylvania Rules of Criminal Procedure, it
20 pertains to discovery and inspection of
21 materials. Section f, regards protective orders
22 and it gives the Court very wide authority,
23 really for almost any reason the Court deems
24 appropriate, to issue a protective order over
25 discovery materials.

1 JUDGE FEUDALE: As to the grand jury
2 transcript that I authorized and released, where
3 we did the earlier procedure with regard to the
4 civil attorneys and we had a separate proceeding,
5 wasn't there an order indicating that that
6 information wasn't to be turned over in general
7 or to civil attorneys? I don't have it with me.

8 MR. FINA: My recollection, Judge, it
9 was pointed to the civil attorneys.

10 JUDGE FEUDALE: Okay.

11 MR. FINA: Off the top of my head, I
12 don't remember. It was a pretty all encompassing
13 order.

14 MR. ROMINGER: It included language if
15 there were other people besides the defendant,
16 the Pennsylvania lawyers, we were to ask and
17 that's why we sent you one e-mail saying we
18 wanted to share it with the expert Dr. Atkin. We
19 wanted to share it with Dr. Berlin. So our
20 interpretation of the order it was restricted to
21 everybody and, in fact, with the New Jersey
22 attorneys it did create some hick-ups for us
23 because they didn't have access to some
24 discovery, they would make an argument to us why
25 aren't you guys saying that? We would tell them

1 we can't show it to you. So you just have to
2 trust us there's a reason we're not asking those
3 questions or calling that witness.

4 JUDGE FEUDALE: Judge Cleland.

5 JUDGE CLELAND: Thank you. I have a
6 couple questions.

7 Mr. Fina, you interviewed Matt Sandusky
8 and tape recorded the interview, that's correct?

9 MR. FINA: Yes, Your Honor.

10 JUDGE CLELAND: And how many copies of
11 that tape were made?

12 MR. FINA: There were three copies.
13 There are only three copies in existence -- well,
14 there were as of the conclusion of the interview.
15 And, again, I can provide testimony from both
16 Corporal Dombrowski and Special Agent Sassano.
17 One copy was kept in evidence here in the OAG and
18 Agent Sassano can testify about that. No other
19 copies were made. A second copy was kept in
20 evidence at PSP under the supervision of Corporal
21 Dombrowski. No other copies of that were made.
22 A third disc was provided to the defense.

23 JUDGE CLELAND: And transcripts -- were
24 transcripts made of it and provided to the
25 defense?

1 MR. ROMINGER: No.

2 MR. FINA: There was a transcript made,
3 I believe, the next day or -- the following day
4 or some time thereafter, Your Honor. But I don't
5 believe a copy ever got to defense. I'm not
6 clear so.

7 MR. AMENDOLA: We never got a copy. The
8 letter indicated, Your Honor, that there was a
9 copy of the transcript with the disc but there
10 was no transcript attached to the disc.

11 MR. FINA: The transcript at the time of
12 getting the disc to the defense was not made
13 because we wanted to get it over there as quickly
14 as possible.

15 I would note, Your Honor, that the -- on
16 *The Today Show* this morning they were playing
17 actual audio excerpts of the interview with Matt
18 Sandusky. They were not relying on the
19 transcript.

20 JUDGE CLELAND: And do you have -- are
21 you confident that that is the actual tape that
22 you made?

23 MR. FINA: Yes, Your Honor. The trooper
24 listened to the interview that was on this
25 morning on *The Today Show* and confirms it's an

1 exact duplicate of the tape that we made.

2 JUDGE CLELAND: And, Mr. Amendola, I
3 understand what you said is that the tape was
4 delivered to you and you did not listen to it but
5 delivered it to Mr. Rominger; is that correct?

6 MR. AMENDOLA: Yes, Your Honor. Because
7 there was no transcript and I didn't have time to
8 review it by playing it. So I asked Mr. Rominger
9 to review it and give me a thumbnail sketch of
10 what Mr. Sandusky was saying.

11 JUDGE CLELAND: And then, Mr. Rominger,
12 I couldn't quite hear what you said. Did I hear
13 you say that that tape is still in your car?

14 MR. ROMINGER: It is with all my
15 Sandusky materials. I had yet -- I was going to
16 unload them into the office this morning but when
17 I was summons to come up here, I simply didn't
18 take the file out of the car.

19 JUDGE CLELAND: Okay. Then I would
20 direct that you return that tape to Ms. Grey so
21 that it can be made part of the record and
22 subject to the protective order. Can you give
23 that to her this morning? You have it with you
24 in your car?

25 MR. ROMINGER: I do, Your Honor. I can

1 go get it right now.

2 JUDGE CLELAND: You don't have to do it
3 right now but at the end of the hearing.

4 MR. ROMINGER: Okay.

5 JUDGE CLELAND: Okay. And do I take it
6 that you are representing to the Court that you
7 didn't make any copies of this either?

8 MR. ROMINGER: I made no copies of it,
9 and I have no copies of it.

10 MR. AMENDOLA: And, Your Honor, just to
11 maybe add another piece to this puzzle, as the
12 Court knows, we were going through volumes of
13 information really during the trial. That tape,
14 as I recall, and I could be wrong, but I recall
15 that tape was dropped off at my office. I don't
16 recall getting it specifically handed to me by
17 someone from the A.G.'s Office. It is
18 possible -- I can check.

19 But it is possible that my secretary
20 made a copy of it but she would have made a copy
21 of it not to disseminate it. She would have made
22 a copy to give to our staff, and there's one
23 other person I can talk with who was assisting
24 with us. I can't for the life of me -- this is
25 the young lady who was at our table during the

1 trial. I can't imagine for the life of me think
2 that she would have divulged that for any reason.
3 She was given strict directives this was all
4 confidential stuff. I can check on that.

5 That's the only other way a copy might
6 have been made. I wasn't even in the office if
7 and when it was. I wasn't there. I was working
8 18-hour days just trying to get ready for trial.

9 MR. FINA: I believe it's accurate, Your
10 Honor, that it was slid under the door to
11 Mr. Amendola's office. No. I'm sorry. Yeah, I
12 have in my hand a receipt signed by Diane --

13 MR. AMENDOLA: Amendola.

14 MR. FINA: Diane Amendola who signed for
15 it at 4:53 p.m. on June 15, 2012. We can put the
16 officers under oath and put this on the record.
17 I think that -- we can definitely do that. I
18 think it's probably a good idea, but I have the
19 receipt in my hand.

20 JUDGE CLELAND: That's all the questions
21 I have. Thank you.

22 JUDGE FEUDALE: Well, you know, as far
23 as my role with regard to the grand jury
24 information that has not been disclosed, that was
25 provided but not disclosed in the public

1 proceeding or in the trial, I agree that I'm
2 going to -- if I didn't say it clearly -- state
3 it in the matter with regard to our earlier
4 proceeding with regard to the disseminating to
5 civil counsel, there's going to be clarity with
6 regard to that transcript of Matthew Sandusky
7 that testified before the state wide
8 investigative grand jury not be disclosed and a
9 protective order would be entered in that regard.

10 As far as how the tape appeared in the
11 hands of the media, I think that's something that
12 you're just going to have to follow through on
13 this.

14 MR. AMENDOLA: The irony is, Your Honor,
15 we have no reason to release that tape to the
16 media to have them play that tape in which
17 apparently he says that his father committed
18 inappropriate acts with him. I mean, that's
19 certainly not in our best interest to revealed
20 that. It makes no sense.

21 MR. McGETTIGAN: You also have no reason
22 to comment on it. Yet Mr. Rominger was making
23 comments on the same interview that that the tape
24 was played.

25 MR. ROMINGER: Because when I left the

1 prison I was questioned about a tape with
2 specific information that sounded like Mr. Iskoff
3 (phonetic) had clearly heard it. So my counter
4 was if you heard the tape, you know at the
5 beginning he says he's worried about perjuring
6 himself. I believe that was my --

7 MR. McGETTIGAN: Sometimes the best
8 counter is silence.

9 MR. FINA: Your Honor, I would just note
10 that we would request that the order that you
11 enter not be limited to Matthew Sandusky's
12 testimony because, again, we turned over a great
13 many transcripts beyond individuals who testified
14 at trial.

15 JUDGE FEUDALE: Okay.

16 MR. FINA: We turned over transcripts of
17 other potential victims and transcripts relating
18 to the Penn State University and some of the
19 potential events involving Penn State's
20 connection with this case that I think would be
21 highly sought by the media and that would not be
22 in the best interests, again, of anybody,
23 especially potentially ongoing matters to be
24 disclosed.

25 MR. AMENDOLA: We have no problem with

1 that, Your Honor --

2 MR. ROMINGER: None.

3 MR. AMENDOLA: -- entering whatever
4 protective order the Court feels is appropriate
5 from either Judge Cleland and yourself, Your
6 Honor.

7 I'm not giving that information to
8 anybody. I can assure you of that. As a matter
9 of fact, I would like to give it back to the
10 Commonwealth but it's not timely now because we
11 still have sentencing coming up. I certainly
12 have no intention of divulging that or giving the
13 general public or media copies of that
14 information.

15 MR. ROMINGER: While we're airing our
16 concerns, I have been asked by several media
17 representatives who claim to have seen e-mails
18 from Graham Spanier and the handwritten notes
19 between Curley and Schultz which were showed to
20 us -- I believe they were shown to us briefly at
21 a hearing on a continuance, Judge, when the
22 Commonwealth was attempting to show that Curley
23 and Schultz would not be viable witnesses.

24 I find it fascinating that these media
25 members can quote specifically out of those

1 materials which are not in the public record
2 which are grand jury material. If we're going to
3 run around and talk about that, I would raise
4 that as well.

5 MR. FINA: I think that is -- that's a
6 significant concern and it's one of the concerns
7 that I have and one of the reasons that I'm very
8 anxious to get protective orders if possible. I
9 mean, those -- copies of those e-mails and
10 handwritten notes were turned over in this case
11 in discovery and they're in the possession of the
12 defense. Unfortunately, copies of those also are
13 held by Penn State who was, you know, the
14 originator of them -- one of the sources for
15 them.

16 So, I mean, that's a grave concern for
17 us as well and the possession of those by Penn
18 State is beyond the ken of this hearing but
19 that's something we'll have to address at some
20 other point.

21 JUDGE FEUDALE: Go ahead, Judge.

22 JUDGE CLELAND: My recollection is that
23 those e-mails and handwritten notes are part of
24 the record in this case.

25 MR. FINA: They are, Your Honor.

1 JUDGE CLELAND: Under seal but they
2 certainly were turned over and in the possession
3 of the defendant.

4 MR. FINA: Yes, Your Honor.

5 MR. ROMINGER: Your Honor, I don't
6 disagree if they were actually given to us. I
7 didn't understand if Mr. Amendola had received
8 copies. I remember being shown them in that
9 hearing and argued but I was just pointing out
10 these same reporters that are asking me a lot of
11 others things are asking me pointed questions.
12 They read those as well. I have no idea where
13 they got them.

14 MR. FINA: I agree, Judge. As I started
15 out, I started out talking in broad terms over a
16 number of phone calls from the media and then I
17 focused in on this specific example.

18 But we are receiving phone calls about
19 other issues again that would involve matters
20 that were not publicly disclosed as part of the
21 trial and that is why any protective orders that
22 Your Honors deemed appropriate in this case, we
23 would request are broader than just the Matthew
24 Sandusky information.

25 JUDGE FEUDALE: Judge, anything?

1 I mean, I heard Mr. Fina make the
2 request. It sounds like I was narrowing my
3 protective order but my understanding is that
4 Mr. Amendola nor Mr. Rominger object to both
5 judges entering a protective order that precludes
6 the discovery of any information that did not
7 come out in the public proceeding or trial and
8 that a protective order would cover those
9 materials, a broad protective order --

10 MR. FINA: Yes, Your Honor.

11 JUDGE FEUDALE: Is that correct?

12 MR. AMENDOLA: Yes.

13 MR. ROMINGER: No objection.

14 JUDGE FEUDALE: No objection?

15 MR. AMENDOLA: No objection.

16 JUDGE FEUDALE: Okay.

17 JUDGE CLELAND: I will certainly draft
18 an order now and get it filed this morning.

19 MR. FINA: Thank you.

20 JUDGE FEUDALE: All right. I will do
21 likewise, maybe not this morning.

22 Anything else?

23 JUDGE CLELAND: Just one thing that I
24 would like to say, and this is certainly not in
25 the context of any legal issues. This is more in

1 the nature of *friend to friend* kind of
2 conversation. I hope it's taken in that light.

3 This is not the first time that I have
4 had conversations with counsel about press
5 problems and, you know, I hope this is the last
6 because I'm sure that neither -- I don't mean to
7 speak for Judge Feudale. But I'm sure neither of
8 us want to be put in the very difficult position
9 of having to take any further action because this
10 has, obviously, serious implications for
11 everybody involved and, you know, I just hope
12 that we're not put in what could be a very
13 awkward and difficult position if this were to
14 happen still again.

15 I say that as a friend, you know. I
16 don't mean that as a threat or, you know,
17 anything at all like that. Just but that is the
18 reality of the world we live in, and I just
19 wanted to bring that to everyone's attention as a
20 friend of the professional colleague.

21 MR. AMENDOLA: Thank you, Your Honor.

22 MR. ROMINGER: Thank you.

23 JUDGE FEUDALE: I would echo that. I
24 said it before but both of us are dealing with a
25 complex, controversial, and continuing evolving

1 case but from my perspective, the grand jury
2 investigation continues. I don't determine what
3 witnesses are to be called and not called. I
4 have a responsibility for secrecy and also
5 facilitating the grand jury investigative
6 process. I heard both attorneys indicate they're
7 not going to be causing any difficulty with
8 regard to the framework of the protective order
9 that both of us are going to be entering.
10 Neither do I want coercive sanction type of
11 proceedings if we can avoid that. That was the
12 reason Mr. Fina asked us all to gather so quickly
13 to facilitate that.

14 Still how that tape or what they have,
15 how that got into the hands is of some concern to
16 me, I can tell you that.

17 MR. AMENDOLA: Yes.

18 JUDGE FEUDALE: You would indicate
19 you're going to be, Mr. Amendola, following up?

20 MR. AMENDOLA: I will verify, Your
21 Honor, and get back to Mr. Fina.

22 MR. FINA: We're obviously looking into
23 this matter ourselves.

24 And, again, I would just like to thank
25 everybody for making themselves available here on

1 such short notice.

2 MR. McGETTIGAN: Your Honor, this is Joe
3 McGettigan.

4 I just have one inquiry I want to make
5 to the Court.

6 Up until now I have limited my comments
7 since the entry of the gag order to one word. I
8 have had a number of inquiries posed to me about
9 the circumstances under which Mr. Sandusky did
10 not testify or that is the defendant,
11 Mr. Sandusky, did not testify. I have not yet
12 responded to them but I would like to based upon
13 my recollection of the record and I do not
14 believe that would be a violation of Your Honor's
15 present order and want to make certain of that.
16 Because I have had inquiries and I would like to
17 respond to them.

18 JUDGE CLELAND: Well, speaking for
19 myself, I -- the gag order was rescinded as of
20 the entry of the verdict. I don't know that I
21 have any authority to restrict now that the
22 verdict has been entered unless there's some
23 impact on the fairness of the proceeding.

24 MR. McGETTIGAN: Thank you, Your Honor.

25 MR. FINA: I have nothing further.

1 JUDGE FEUDALE: Anything else?

2 Mr. Amendola?

3 MR. AMENDOLA: No, Your Honor.

4 JUDGE FEUDALE: Thanks a lot. Thank you
5 very much, Judge Cleland. We'll close the record
6 and I'll ask the court reporter to get a copy of
7 the record prepared as expeditiously as possible
8 to be disseminated to the appropriate parties.
9 I'll be entering my order forthwith.

10 MR. FINA: Thank you.

11 JUDGE CLELAND: Thank you for including
12 me, Judge.

13 MR. McGETTIGAN: Thank you, Your Honor.

14 MR. FINA: Thank you, Judge.

15 MR. AMENDOLA: Thank you, Your Honor.

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C E R T I F I C A T E

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me upon the hearing of the within matter, and that this copy is a correct transcript of the same.

Date

8/9/12

Patricia A. Grey, RPR
Official Reporter

APPROVAL OF COURT

The foregoing record of the proceedings had upon the hearing in the within case, after having been reviewed and approved by the attorneys, is hereby approved and directed to be filed.

Date

8/6/12

John M. Cleland, Senior Judge
Specially Presiding

C E R T I F I C A T E

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Date

8-8-12

Barry F. Feudale
Barry F. Feudale, Senior Judge
Specially Presiding